

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)
(Permanent Line Sharing Phase)

**ADMINISTRATIVE LAW JUDGE AND ASSIGNED
COMMISSIONER'S RULING TO REVISE SCOPE AND
PROCEDURAL SCHEDULE OF PERMANENT LINE SHARING PHASE**

Background

On November 29, 2001, Covad Communications Company (Covad) filed a motion for an order amending the procedural schedule of the proceeding, requiring additional testimony from parties on Verizon issues and revising the scope of this proceeding to include fiber-fed Next Generation Digital Loop Carrier (NGDLC) issues with regard to Verizon.¹ In its filing, Covad indicates

¹ At the same time, Covad filed a separate motion to shorten the response time to its motion, with a response due from Verizon on Monday, December 3. In a telephone conversation with the assigned Administrative Law Judge (ALJ), Verizon indicated that it needed more time to respond. In a conference call with all parties on

Footnote continued on next page

that through the discovery process, Covad discovered that the information submitted by Verizon in this proceeding is incomplete, out-of-date and misleading. Specifically, Covad indicates that Verizon is actively planning, and in some cases already deploying, the components of a network capable of supporting line sharing UNEs for DSL over fiber-fed NGDLC. Also, Verizon recently filed an application with the Commission to absorb its data affiliate, Verizon Advanced Data, Inc. (VADI). After such reintegration, Competitive Local Carriers (CLCs) will be competing directly with Verizon in the provision of DSL services, which raises serious issues regarding the manner in which Verizon will treat its own broadband operations relative to providing line sharing UNEs to competitors for broadband services.

Covad asserts that Verizon has not addressed or fully explained any of these recent developments in its previously filed testimony, and thus its testimony is no longer accurate or up-to-date. Left uncorrected, Verizon's testimony creates a fundamentally misleading impression of the status of several major issues in this proceeding. Thus, according to Covad, Verizon's testimony could violate Rule 1 of the Commission's Rules of Practice and Procedure, which forbids misleading the Commission in any way, even through omission or inadvertence.

In its response to Covad's motion, Verizon indicates that it concurs with the procedural relief requested by Covad, specifically the submission of additional testimony and establishing a new hearing schedule. However, Verizon voices strong opposition to the notion that Verizon has attempted to

December 7, 2001, it was agreed that Verizon's response would be due in 15 days of the date that Covad's motion was served, which is December 17, 2001.

mislead the Commission in any way. Verizon states it recognizes that, while accurate when written, its testimony filed in June and July 2001 in this proceeding is now outdated in certain respects on fiber-fed NGDLC issues. This is not surprising, since Verizon continued to explore the possibility of deploying its “Packet at Remote Terminal Service” (PARTS) service as this proceeding progressed. Verizon requests that the assigned Administrative Law Judge (ALJ) and Assigned Commissioner amend their ruling of April 19, 2001 on the scope of the proceeding.

Verizon also asks that the requirement that Verizon file quarterly status reports on the availability of its PARTS service be eliminated. According to Verizon, this requirement was intended to keep the Commission informed of the status of Verizon’s PARTS deployment in an effort to determine the appropriate time to address fiber-fed DLC issues for Verizon in this proceeding. Since Verizon concurs that fiber-fed DLC issues should be included in this proceeding now, Verizon believes the Commission will no longer need quarterly updates on PARTS.

Covad also filed a motion for leave to file portions of its November 29, 2001 motion for an order amending the procedural schedule and requiring additional testimony, under seal.

Discussion

In our Ruling of April 19, 2001, we recognized that Verizon’s PARTS project was still on the drawing board and had not yet been deployed. We concluded that PARTS, which at that time was only a hypothetical network, would not be addressed during this phase of the proceeding. At the same time, we established a quarterly reporting mechanism so that the assigned ALJ and the

Telecommunications Division could be kept current on the status of its PARTS project.

Based on Covad's motion and Verizon's response, we find that Verizon's fiber-fed NGDLC network, either identified as PARTS or under a different name, should be included within the scope of this proceeding. Verizon acknowledges that the testimony filed in June and July 2001 does not reflect Verizon's current deployment plans, and we will order that updated testimony be submitted. Therefore, we amend our April 19, 2001 Ruling, and place Verizon's fiber-fed NGDLC product within the scope of this proceeding. Since we will be dealing with NGDLC issues within the scope of this proceeding, we no longer need the quarterly updates from Verizon on the status of its PARTS deployment plans.

We reject Covad's allegation that Verizon's testimony could constitute a Rule 1 violation. Verizon has provided convincing rebuttal to Covad's allegation. Verizon's prefiled testimony, which was filed six months ago, provided a snapshot of Verizon's deployment of NGDLC in California. It is clear from both Covad and Verizon's filings, that the snapshot is no longer valid today. However, Verizon was not constrained from continuing to explore deployment of an NGDLC network simply because it had not done so when testimony was served.

Both Covad and Verizon presented proposed procedural schedules in their filings. Covad's proposed schedule, which had Verizon filing testimony on December 21, 2001, is clearly not realistic, and Verizon's schedule, which would defer hearings until April, appears to be unnecessarily lengthy. We take this opportunity to reiterate our goal to move this proceeding along as expeditiously as possible. We have scheduled a conference call for Friday, December 21, 2001,

at 8:00 a.m. to set the procedural schedule for Verizon's NGDLC portion of the proceeding.

As a result of Covad's request to defer the Verizon portion of the proceedings, the hearings previously scheduled for December 6-7, 2001 for Verizon's witnesses were cancelled.

During the December 7, 2001 conference call which the assigned ALJ called to discuss procedural issues relating to the line sharing proceeding, parties discussed the issue of bifurcating the proceeding so as not to delay the proceeding for issues relating to Pacific Bell (Pacific). The assigned ALJ decided to bifurcate the proceeding, as recommended by the parties in the conference call. The following three issues, as they relate to Verizon only, will be deferred: 1) Fiber-fed NGDLC, 2) OSS issues, and 3) splitter ownership. During the course of the conference call, the assigned ALJ gave parties an opportunity to indicate their opposition to stipulating to the admission of the portions of Verizon's existing pre-filed testimony that address other issues, and no party stated opposition. Therefore, Verizon's witnesses' testimony on all issues, except the three listed above, will be admitted into evidence.

Based on discussions during the December 7 conference call, and subsequent e-mails from the parties, Opening Briefs on all issues relating to Pacific and all other issues relating to Verizon are due on January 22, 2002, and Reply Briefs, on February 15, 2002. This portion of the proceeding will be submitted with the filing of Reply Briefs.

Therefore, **IT IS RULED** that:

1. Verizon California Inc.'s (Verizon) fiber-fed Next Generation Digital Loop Carrier shall be included within the scope of this proceeding.

2. A telephone conference call shall be scheduled for December 21, 2001 at 8:00 a.m. Pacific Standard Time to finalize a schedule for the filing of testimony and scheduling of hearings regarding Verizon's NGDLC offering.

3. Effective immediately, Verizon California Inc. shall no longer be required to report quarterly to the assigned Administrative Law Judge and to the Telecommunications Division Director on the status of its Packet at Remote Terminal Service.

4. We shall bifurcate this proceeding. The following three issues as they relate to Verizon only, will be addressed in a separate phase: 1) fiber-fed NGDLC, 2) Operation Support System issues, and 3) splitter ownership.

5. The following briefing schedule shall be adopted for all issues relating to Pacific Bell, and all issues, except those listed in Ordering Paragraph 4 above, as they relate to Verizon: Opening Briefs shall be due January 22, 2002, and Reply Briefs, on February 15, 2002.

6. The November 29, 2001 motion of Covad to file under seal the proprietary portion of its motion for an order amending the procedural schedule and requiring additional testimony, is hereby granted.

Dated December 20, 2001, at San Francisco, California.

/s/ Karen A. Jones
Karen A. Jones
Administrative Law Judge

/s/ Richard A. Bilas
Richard A. Bilas
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge and Assigned Commissioner's Ruling to Revise Scope and Procedural Schedule of Permanent Line Sharing Phase on all parties of record in this proceeding or their attorneys of record.

Dated December 20, 2001, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

R.93-04-003, I.93-04-002 RB1/KAJ/avs